

1 BEFORE THE BOARD OF MEDICAL EXAMINERS
2
3 IN THE STATE OF ARIZONA

4 In the Matter of

5 **JOHN HAWLEY FANCHER, M.D.**

6 Holder of License No. 19982
7 For the Practice of Medicine
8 In the State of Arizona.

No. 00F-19982MDX

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER FOR
LICENSE REVOCATION**

9 On June 22, 2001, this case came before the Arizona Board of Medical Examiners
10 ("Board") for oral argument and consideration of the Recommended Decision of the
11 Administrative Law Judge ("ALJ") containing proposed findings of fact, conclusions of law.
12 John Hawley Fancher, M.D. did appear and was represented by counsel. The State was
13 represented by Assistant Attorney General, Stephen Wolf. The Board was advised by its
14 legal advisor, Christine Cassetta, Assistant Attorney General.

15 The Board, having considered the ALJ's recommendation, and the entire
16 administrative record in this case, hereby issues the following Findings of Fact,
17 Conclusions of Law, and Order.

18 **FINDINGS OF FACT**

19 1. The Arizona State Board of Medical Examiners ("the Arizona Board") is the duly
20 constituted authority for licensing and regulating the practice of allopathic medicine in the
21 State of Arizona.

22 2. John Hawley Fancher, M.D. ("Respondent") holds License No. 19982 for the
23 practice of allopathic medicine in the State of Arizona.

24 3. Respondent was previously authorized to practice medicine in the State of New
25 York, having been issued License No. 198654 by the State of New York Department of
Health State Board for Professional Medical Conduct ("the New York Board").

1 4. On or about March 17, 1999, a Hearing Committee of the New York Board
2 issued a determination and order that sustained charges against Respondent for
3 unwarranted treatment, moral unfitness, negligence on more than one occasion,
4 incompetence on more than one occasion, and failure to maintain records. Those charges
5 involved findings that, with respect to seven emergency room patients treated during the
6 period of April 18-23, 1995, Respondent: (1) knowingly prescribed, without medical
7 justification, an injection of magnesium sulfate because it would hurt a patient and deter
8 him from returning to the emergency room; (2) failed to document adequately the location
9 and extent of a patient's facial lacerations, and the procedures used to close them; (3)
10 failed to timely intubate a patient; (4) failed to perform and document adequate physical
11 and/or neurological examinations of six patients; and (5) failed to obtain and document an
12 adequate patient history of four patients.

13 5. With respect to Respondent's order to give a patient an injection of magnesium
14 sulfate, the New York Board found that Respondent discontinued the order before the
15 injection was given, after a nurse and an intern questioned the medical justification for
16 such an injection.

17 6. Through that determination and order, the New York Board revoked
18 Respondent's license to practice medicine in the State of New York effective on or about
19 March 26, 1999.

20 7. Respondent was also previously authorized to practice medicine in the State of
21 Ohio, having been issued License No. 35-070227 by the State Medical Board of Ohio.

22 8. On or about February 9, 2000, on the basis of the New York State Board's
23 action, the State Medical Board of Ohio adopted the Findings of Fact and Conclusions of
24 Law of the Hearing Examiner, and entered an Order revoking Respondent's license to
25 practice medicine in the State of Ohio, effective on or about February 23, 2000.

1 9. Respondent was associated with M.D. Pharmacy/M.D. Healthline, an Internet
2 prescription service, during the period of January - June, 1999.

3 10. During that period, Respondent prescribed Viagra for at least three thousand
4 applicants to M.D. Pharmacy/M.D. Healthline's Internet prescription service. Before
5 issuing those prescriptions, Respondent did not conduct a physical examination, or have
6 an established physician/patient relationship with any of the individuals to whom he
7 prescribed Viagra through M.D. Pharmacy/M.D. Healthline's Internet prescription service,
8 which is below the standard of care.

9 **FINDINGS OF FACT TO WHICH THE PARTIES DO NOT STIPULATE**

10 **DR. FANCHER'S BACKGROUND AND EDUCATION**

11 11. Dr. Fancher grew up in New England and, at the time of the hearing in this
12 matter, was 53 years old. Following graduation from Union College in 1971, and brief
13 stints "living simply" on Cape Cod and then living with his family in Reading, Pennsylvania,
14 working as a car salesperson to save money, Dr. Fancher traveled abroad, to destinations
15 including Iceland, Morocco, Istanbul, Luxembourg, India, Nepal, and Afghanistan, for
16 adventure and to satisfy his wanderlust. Dr. Fancher testified at the hearing that "it was a
17 youthful time of motorcycles and long hair" and hitch-hiking abroad was "what you did
18 back then, kind of a formula for finishing school in a way." During college and his travels,
19 Dr. Fancher used recreational drugs, especially alcohol.

20 12. After Dr. Fancher ran out of money, friends found him a job teaching English in
21 France. After that, he worked for 2½ years as a snorkel instructor at Club Med in the
22 French West Indies. Dr. Fancher eventually found this position to be interesting but
23 "brainless" and decided to go to medical school.

24 13. Dr. Fancher returned to New York City to work as a maitre d' in a restaurant to
25 save money for medical school. He did not take the MCAT and applied only to medical

1 schools that were located in France. He was accepted by and, in 1976, began studies at
2 the medical school in Grenoble, France.

3 14. In France, medical school requires a minimum of seven years to complete,
4 beginning with an entrance examination. Many applicants are admitted in the first year,
5 during which difficult courses in anatomy, mathematics (including differential equations),
6 organic chemistry, biochemistry, and physiology are required, but very few students are
7 allowed, based on grade point average, to continue into the second year. The first year
8 was more difficult for Dr. Fancher than for his fellow students because, although he could
9 speak fluently and read French when he began medical school, he had to learn to write in
10 French using technical French terms to succeed there.

11 15. During his final year in medical school, Dr. Fancher had to write his thesis,
12 which he described as "a book in French." Nine years after starting medical school, Dr.
13 Fancher defended his thesis on Carcinoid Tumors of the Thymus and interned at a local
14 hospital in France and, in March 1985, he was awarded his medical degree.

15 16. Following Dr. Fancher's graduation from medical school in Grenoble, he
16 volunteered and served four months in Afghanistan, during the armed conflict involving
17 rebel forces and the Soviet Union, with Doctors of the World (an offshoot of Doctors
18 Without Borders). Dr. Fancher worked seven days a week doing "tough, physical" medical
19 work, which he found "extremely rewarding."

20 17. In approximately June or July of 1985, Dr. Fancher returned to New York City to
21 complete a one-year internship at Metropolitan Hospital. He then took a three-month
22 vacation in France, followed by a two-year residency in internal medicine in Queens, New
23 York.

24 18. In 1989, Dr. Fancher began his *locum tenens* practice in internal medicine.
25 Due to a shortage of emergency room doctors, after two years Dr. Fancher also began
performing *locum tenens* work in emergency rooms.

1 19. Between 1989 and 1996, Dr. Fancher performed *locum tenens* work in many
2 cities in the United States, including cities in Arizona and New York, but not in Ohio.

3 20. Dr. Fancher became board-certified in internal medicine in 1991.

4 21. After 1992 or 1993, most of Dr. Fancher's *locum tenens* work was in hospital
5 emergency rooms.

6 22. In April 1996, Dr. Fancher moved to the Phoenix area and began working in a
7 long-term office practice in internal medicine for Northwest Medical Centers.

8 23. After August 1999, Northwest Medical Centers closed for business reasons and
9 Dr. Fancher lost his job there.

10 DISCIPLINARY, LEGAL, AND MENTAL HEALTH HISTORY

11 24. Dr. Fancher admitted at the hearing that, as a result of his misapplication of a
12 plastic splint on the fractured leg of a 14-year-old boy while he was doing *locum tenens*
13 work in Page in 1992, he was sued for malpractice and the Arizona Board issued a letter
14 of censure against his Arizona license.

15 25. Between April 18 and April 23, 1995, Dr. Fancher was performing *locum tenens*
16 practice in the emergency room at Millard Fillmore Hospital in Buffalo, New York. Dr.
17 Fancher testified that he did not know that Millard Fillmore Hospital was the training
18 hospital for the University of Buffalo Medical School, which he testified meant his
19 documentation would be scrutinized more closely than in the immediately prior *locum*
20 *tenens* position in internal medicine he had held for the preceding four months in Kingman,
21 Arizona.

22 26. Complaints by other hospital personnel about Dr. Fancher's care of the seven
23 patients in the Millard Fillmore Hospital emergency room resulted in termination of his
24 employment there after April 23, 1995.

25 27. None of the seven patients at Millard Fillmore Hospital suffered serious or
permanent injury as a result of Dr. Fancher's treatment in the emergency room.

1 28. In 1997 Dr. Fancher was arrested for driving under the influence of alcohol and,
2 "for the first time . . . started getting some insight into the kinds of things that take place
3 when someone is starting to develop a problem with alcohol," including denial. After the
4 incident, Dr. Fancher did not change his drinking habits because, "after years in France,
5 [he] really, really liked [his] wine every night and considered [himself] sort of a
6 connoisseur."

7 29. The New York Board held a hearing on October 29, 1998, November 20, 1998,
8 December 3, 1998, and December 11, 1998 on the charges against Dr. Fancher stemming
9 from his treatment of the seven patients at Millard Fillmore Hospital emergency room in
10 April 1995. Dr. Fancher appeared, was represented by legal counsel, testified on his own
11 behalf, and presented testimony by four expert witnesses, including his supervisor at
12 Northwest Medical Centers, his employer at the time.

13 30. Dr. Fancher's defense to the charges was that his treatment of the seven
14 patients did not fall below the applicable standard of care and did not constitute grounds
15 for discipline of his New York medical license. Dr. Fancher did not offer evidence of
16 alcoholism or depression or any other evidence to mitigate the penalty to be assessed.

17 31. On March 26, 1999, the New York Board revoked Dr. Fancher's New York
18 license. It gave Dr. Fancher's testimony little weight because:

19 The Hearing Committee found the testimony of Respondent to be
20 inconsistent. They further found that his attitude was frequently
21 arrogant and cocky. They further note that he was quick to blame
22 everyone else, in particular blaming Millard Fillmore Hospital for failure
23 to provide him with a proper orientation. . . . He also tried to blame his
24 inadequate documentation on the relaxed charting requirements he
25 had acquired while working for the military. . . . The Hearing
Committee further finds that Respondent misrepresented about
whether he was sued for malpractice. . . . As a result, the Hearing
Committee found that Respondent was not a credible witness and
thus greatly discounted his testimony.

1 32. The New York Board found that the penalty of revocation rather than a lesser
2 sanction was appropriate because:

3 The Hearing Committee believes that the cases presented before
4 them reveals a disturbing pattern of shoddy patient care by
5 Respondent. Respondent has demonstrated a lack of commitment to
6 thoroughness in the history, evaluation and treatment of patients. His
7 documentation of medical records is chronically bad. The short time
8 span of the cases presented at hearing is further indication of
9 Respondent's entrenched cursory approach to patient care and the
10 inherent danger it creates to patients.

11 Respondent's demeanor before the Hearing Committee was
12 unrepentant and at times dishonest. Respondent did not truly accept
13 responsibility for his actions except for the missed x-ray for Patient B.
14 Respondent tried to blame everyone for his situation and painted
15 himself as a victim of the actions of the staff and management of
16 Millard Fillmore Hospital. The Hearing Committee believes that
17 Respondent lied when he claimed to recall aspects of his examination
18 of patients by reading between the lines of his scanty documentation.
19 They also find that he lied about his malpractice lawsuits. The
20 Hearing Committee further finds no evidence of remorse by
21 Respondent, and note that he often exhibited an air of justification for
22 his actions. As a result, they find that Respondent's poor attitude
23 does not make him a good candidate for retraining. Under the totality
24 of the circumstances, revocation of Respondent's license is the only
25 appropriate sanction in this instance.

1 33. After his New York license was revoked, Dr. Fancher's attorney in Arizona, Mr.
2 Jantsch, referred him to Mark Speicher, a consultant on substance abuse. Mr. Speicher
3 referred Dr. Fancher to psychologist Phillip D. Lett, Ph.D., who evaluated him on April 21,
4 1999. Dr. Lett's eight-page report of his evaluation concluded in relevant part:

5 Dr. Fancher's medical license was revoked in the State of New York
6 3/17/99 as the result of a five-year investigation involving professional
7 misconduct. Dr. Fancher explains that the hospital staff was out to
8 get him and he feels that he was setup. The referral question was to
9 address any problems that may reflect on his fitness for duty for
10 medical licensure in the State of Arizona.

11 Dr. Fancher is a bright man whose intellectual functioning is in the
12 superior range. There was a significant discrepancy between his

1 verbal and nonverbal abilities with his verbal abilities by far exceeding
2 his nonverbal abilities. Relative to his own abilities, he had two
3 significantly low scores both of which included attention and
4 concentration. Anxiety, depression, substance abuse or other
5 neurological insult/condition can affect these. Cognitive screens
including memory were in the average range. His general memory
functions were significantly above average and consistent with his
superior intellectual abilities.

6 Personality assessment reveals a man who is experiencing
7 depression. He characterized his own emotional status as angry and
8 has a family history of major affective disturbance. A mood disorder
best characterizes the symptoms mentioned above including the
9 quality of ideation and mediation and attention and concentration.
Substance misuse/abuse will need to be ruled out.

10 His profile suggests a pattern of risk taking behavior that points to a
11 propensity for addictive behavior or psychoactive substance abuse.
The risk-taking profile includes a positive history of mood disturbance
12 in the family and personally, the fact that he is treating himself for
13 medical conditions and that he has experimented with psychoactive
substance use in the past and continues to use alcohol.

14 Based on this evaluation, it is recommended that Dr. Fancher seek an
15 attending physician for medical management of his cholesterol and a
16 psychiatrist for his depression. It is also recommended that he not
17 use alcohol until his attending physician's [sic] are comfortable with
the diagnosis and treatment plan they have developed. He may also
profit from psychotherapy to address the emotional factors identified
and discussed above.

18 From a psychological perspective, there are no clear indicators that
19 suggest that he cannot practice his profession given compliance with
the above recommendations. If his emotional status is left unchecked
20 performance problems may result.

21 34. When Dr. Fancher started prescribing Viagra over the Internet in January 1999,
22 "it seemed like it was something that was going to develop through the future" and that he
23 "didn't think it was clearly inappropriate at the time." Dr. Fancher voluntarily stopped
24 writing prescriptions over the Internet in June 1999, because the contributors to the web
25 site were unhappy that he denied approximately 14% of the patients who wanted Viagra,

1 which reduced profits, "it was clear that other state boards were beginning to take action,"
2 and the practice "was being increasingly criticized on moral and ethical grounds."

3 35. The evidence indicates that M.D. Pharmacy/M.D. Healthline employed only a
4 single physician at a time.

5 36. No patient to whom Dr. Fancher prescribed Viagra over the Internet suffered
6 harm as a result of the prescription.

7 37. The Arizona Board at its July 28-30, 1999 meeting endorsed the principle that
8 "[n]o Arizona Patient should be prescribed, dispensed, or furnished a Schedule II-IV
9 prescription drug unless the prescriber has conducted a prior physical examination and
10 diagnosis."

11 38. On September 22, 1999, the Board entered into a consent agreement with
12 William J. Clemans, M.D. under which Dr. Clemans was issued a Decree of Censure,
13 placed on probation for five years, and ordered to refrain from prescribing Viagra to
14 anyone with whom he had not established a physician-patient relationship.

15 39. On November 6, 2000, the Board entered into a consent agreement with Darryl
16 Joseph Mohr, M.D., Dr. Fancher's predecessor at M.D. Pharmacy/M.D. Healthline, under
17 which Dr. Mohr was issued a letter of reprimand and ordered to pay a fine of \$5,000.00,
18 complete 40 hours of continuing medical education, and refrain from prescribing
19 medications in violation of A.R.S. § 32-1401(25)(ss).

20 40. Mr. Speicher on Dr. Fancher's behalf retained Thomas A. Edwards, M.D., who
21 had formerly worked as a consultant for the Board, to review medical charts that Dr.
22 Fancher had prepared at Northwest Medical Centers, selected randomly and without
23 notice to Dr. Fancher, for content and competency. On August 31, 1999, Dr. Edwards
24 examined twenty medical charts prepared by Dr. Fancher and concluded that they were
25 "good records for a general internal medicine specialty practice" that "would allow another
doctor to take over the care of the patient in the absence or unavailability of Dr. Fancher."

1 41. Between December 6, 1999 and December 10, 1999, again on Mr. Speicher's
2 advice, Dr. Fancher received treatment at Springbrook Northwest clinic. The Springbrook
3 Northwest records note that Dr. Fancher's motivation in seeking the evaluation was
4 "extrinsic," in that he feared he would lose his license to practice medicine in Arizona.

5 42. Dr. Fancher was given the following Discharge Diagnoses from Springbrook
6 Northwest:

- 7 Axis I: 1. Alcohol dependence;
 2. Major depression, in remission.
- 8 Axis II: A tendency to disrespect others combined with a
9 propensity for ego inflation and amorality.
- 10 Axis III: No ongoing medical problems.
- 11 Axis IV: Significant including job and career stressors and
 licensure issues. Finances are a problem as well.
- 12 Axis V: GAF 45.

13 The Springbrook Northwest Clinic Discharge Evaluation/Assessment noted that Dr.
14 Fancher's girlfriend, who has been his companion since his New York internship in 1985,
15 reported that Dr. Fancher "had never been a heavy drinker until last year when the
16 licensure issue increased" and that "there have been long periods when he has stopped
17 drinking for months and whenever he had to go back to court he would start drinking
18 again." The Discharge Evaluation/Assessment recommended that Dr. Fancher receive
19 treatment for alcohol dependence in a residential facility that specialized in treating health
20 care professionals.

21 43. On February 9, 2000, the State Medical Board of Ohio revoked Dr. Fancher's
22 license based on the same misconduct found by the New York Board. Dr. Fancher did not
23 appear at the Ohio Board's hearing, contest the revocation, or offer any evidence of
24 alcoholism, depression, or any other factors in mitigation of the penalty imposed.

25 44. Between March 7, 2000 and April 6, 2000, nearly four months after the
Springbrook Northwest evaluation and recommendation, Dr. Fancher sought and received
inpatient treatment at the Valley Hope Association. His initial and final Axis I diagnosis
was "303.90 Alcohol Dependence."

1 45. Dr. Fancher testified that he experienced an "epiphany" during a lecture at
2 Valley Hope Association entitled "The Big I," when he realized that he belonged in the
3 treatment program for addicts. As a result of his "epiphany" and treatment, Dr. Fancher
4 credibly testified he came to the following realizations:

5 Number one, you don't see – you can't see a problem in yourself. We
6 all have difficulty in that. But you can easily see it in other people. So
7 that's the foundation and the reason of being for these groups. What
8 you can't see in yourself you can see in the guy next to you. And as
9 you associate your emotions and what you are feeling and recognize
10 that he is feeling the same thing and his emotions are similar to yours,
11 you start to realize that the same things that are going on with the
12 people you are looking at, who are a bunch of alcoholics and drug
13 addicts, obviously in your eyes, character traits or emotional traits or
14 you've been behaving in many of the same ways. That's the first
15 thing.

16 The other one is just what was previously just a big lump in my
17 throat, walking around with a lot of pent-up emotion that would
18 sometimes come out as aggression, sometimes as anger, very often
19 as fear. I had no words for those things. I didn't know how to use
20 those words in relations to myself.

21 The second thing they really teach you over there, and I think
22 it's the thing that is the best thing about the whole experience, they
23 teach you to start recognizing your own emotions in yourself so that
24 you can begin to deal with them. Because what you don't realize
25 when you walk in there, you have this great big lump, bad feeling you
have in your throat, really is a series of emotions. And you can start
giving each one of them a name. When you can give them a name,
recognize them, pull them apart. You can start doing something
about it.

 Mine was anger. I was the most angry guy in the world I
think I had it a long, long time, the anger.

**DR. FANCHER'S PARTICIPATION IN THE ARIZONA BOARD'S
MONITORED AFTERCARE PROGRAM**

46. On May 11, 2000, Dr. Fancher entered into a Stipulated Rehabilitation
Agreement with the Arizona Board to participate in the Board's Monitored Aftercare
Program ("MAP") for the next five years.

1 47. Pursuant to the Agreement, Dr. Fancher participated in ninety 12-step recovery
2 program meetings over the ninety days following the Agreement. For the five years
3 following May 15, 2000, Dr. Fancher must, among other things, attend three 12-step
4 program meetings per week, a group therapy sponsored by MAP once a week, maintain a
5 medication log, and submit to mental, physical (including urinalysis), and competency
6 examinations by the Board on demand.

7 48. Michael A. Sucher, M.D., the Board's consultant assigned to evaluate and
8 monitor Dr. Fancher's participation in the MAP program, opined in an affidavit admitted
9 into evidence that Dr. Fancher "has given every indication that he has acknowledged his
10 problems, is being properly treated for them and appears well motivated to achieve
11 success in his continuing recovery. All indications are that Dr. Fancher's involvement with
12 MAP and his recovery have been very successful. . . . [H]is prognosis for ongoing
13 successful recovery and compliance is excellent."

14 49. Doctors in Arizona who participate in the MAP program are more than 90%
15 successful in avoiding relapse and continue to practice medicine. The standard of care for
16 regulatory boards around the country is a five-year program of monitored sobriety.

17 50. John Curtin, M.D., Dr. Fancher's primary care physician under the MAP
18 program, believes that Dr. Fancher suffered from alcohol dependence in 1995, when the
19 events occurred that led to revocation of Dr. Fancher's New York license, and that his
20 alcohol dependence presently is in remission.

21 51. Dr. Curtin testified that Dr. Fancher has worked "very hard" at his recovery and
22 presently is a conscientious, safe and excellent physician.

23 **DR. FANCHER'S PATIENTS' TESTIMONIALS**

24 52. Dr. Fancher has treated T.J. since Christmas 1996. Mrs. J. has suffered a
25 variety of health problems since she was 28 years old, beginning with a ruptured thyroid
and, later, migraines, earaches, and a bowel problem. Mrs. J. felt that other doctors from
whom she sought treatment did not listen to her, which made her feel "horrible." Mrs. J.
testified that Dr. Fancher "always spent time with me, always listened, didn't just look at
me and see who other people saw"; he "bothered to listen to a fat, old hysterical woman"
and, through his treatment, gave Mrs. J. "a whole new lease on life."

53. Mrs. J. sent her son, "a severe drug abuser," to Dr. Fancher when her son "was going through a really, really hard divorce" Dr. Fancher "spent probably 45 minutes with [Mrs. J.'s son] talking to him" and prescribed a mild antidepressant. Mrs. J.'s son left "actually thinking that he was going to be okay" and has "continued on okay" since Dr. Fancher's treatment in "probably 1997."

54. Dr. Fancher first treated J.T.K. on April 23, 1997, when his "intestine broke" but his regular doctor, with whom Dr. Fancher shared an office, was not in. Dr. Fancher got Mr. K. to the emergency room after "about two minutes," stayed with him throughout surgery, and visited him at least once and sometimes two or three times a day over the 16 days that Mr. K. was in intensive care, even though Dr. Fancher was not on his insurance plan and probably did not get paid anything for the care. Dr. Fancher continued to treat Mr. K. after he was discharged from the hospital.

55. After Mr. K. read an article in *The Arizona Republic* newspaper that was critical of Dr. Fancher, he wrote a letter to the Arizona Board, summarizing Dr. Fancher's treatment of him and informing it that he "fel[t] that this man is a great asset to the medical field, and that I owe my life to him."

56. J.D.S. met Dr. Fancher when he "was helping [Mr. S.'s wife and daughter] with a weight problem in approximately 1998." Mr. S. subsequently sought treatment from Dr. Fancher for weight, a prostate problem, and depression. Mr. S. felt that Dr. Fancher's experiences in a "combat situation" in Afghanistan would help him understand and treat Mr. S.'s posttraumatic stress syndrome caused by his experiences in Viet Nam in 1967 and 1968. Dr. Fancher "spen[t] a lot of time" with Mr. S. and wrote down "everything that was going on, the names of medications, the pills [he] was taking, sitting down and drawing diagrams of [his] problem." Other doctors who had treated Mr. S. "did not have the time or take the time."

CONCLUSIONS OF LAW

STIPULATED CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject matter described herein and over Respondent.

2. The conduct and circumstances described in Stipulated Findings of Fact Nos. 3-8 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(o) (action taken

1 against a doctor of medicine by another licensing or regulatory jurisdiction due to that
2 doctor's mental or physical inability to engage safely in the practice of medicine, his
3 medical incompetence or for unprofessional conduct as defined by that jurisdiction and
4 which corresponds directly or indirectly to an act of unprofessional conduct prescribed by
Arizona law).

5 3. With respect to the conduct and circumstances described in Stipulated Findings
6 of Fact Nos. 3-6, the New York Board revoked Respondent's license to practice medicine
7 in the State of New York on the basis of certain findings of unprofessional conduct. Those
8 findings of unprofessional conduct correspond directly or indirectly to the following acts of
unprofessional conduct proscribed by Arizona law:

9 a) A.R.S. § 32-1401(25)(l) (conduct that the Board determines is gross
10 malpractice, repeated malpractice or any malpractice resulting in the death of a
11 patient);

12 b) A.R.S. § 32-1401(25)(q) (any conduct or practice which is or might be
13 harmful or dangerous to the health of the patient or the public); and

14 c) A.R.S. § 32-1401(25)(r) (conduct that the Board determines is gross
15 negligence, repeated negligence or negligence resulting in harm to or death of a
patient).

16 4. With respect to the conduct and circumstances described in Stipulated Findings
17 of Fact Nos. 7-8, the State Medical Board of Ohio revoked Respondent's license to
18 practice medicine in the State of Ohio on the basis of certain findings of unprofessional
19 conduct. Those findings of unprofessional conduct correspond directly or indirectly to the
following act of unprofessional conduct proscribed by Arizona law:

20 a) A.R.S. § 32-1401(25)(o) (action taken against a doctor of medicine by
21 another licensing or regulatory jurisdiction due to that doctor's mental or
22 physical inability to engage safely in the practice of medicine, his medical
23 incompetence or for unprofessional conduct as defined by that jurisdiction
24 and which corresponds directly or indirectly to an act of unprofessional
conduct prescribed by Arizona law).

1 5. The conduct and circumstances described in Stipulated Findings of Fact Nos. 9-
2 10 constitute unprofessional conduct pursuant to A.R.S. § 32-1401(25)(q) (any conduct or
3 practice which is or might be harmful or dangerous to the health of the patient or the
4 public).

5 **CONCLUSIONS OF LAW REGARDING DISPUTED ISSUE**

6 6. The only issue to be decided in this matter is the appropriate penalty for conduct
7 that Dr. Fancher admitted violated applicable statutes. Dr. Fancher bears the burden to
8 establish, by a preponderance of the evidence, factors in mitigation that justify a lesser
9 sanction than revocation.

10 7. The legislature created the Arizona Board to protect the public from unlawful,
11 incompetent, unqualified, impaired or unprofessional allopathic physicians.

12 8. The evidence does not establish that Dr. Fancher suffers or at any relevant time
13 suffered from clinical depression that affected his practice of medicine.

14 9. Dr. Fancher sought diagnosis and treatment of his alleged depression and
15 alcoholism, on the advice of his Arizona attorney. Following revocation of Dr. Fancher's
16 New York license, every physician or psychologist who examined Dr. Fancher, except for
17 Dr. Lett, diagnosed him as suffering from alcohol dependence. Dr. Fancher's motivation in
18 seeking treatment cannot change the fact of his alcohol dependence, which the evidence
19 establishes.

20 10. The onset, duration, and effect of Dr. Fancher's alcohol dependence cannot be
21 retroactively established. His "shoddy patient care" of the seven patients at Millard
22 Fillmore in April 1995 might have resulted from alcohol dependence, "lack of commitment
23 to thoroughness in the history, evaluation and treatment of patients," the personal flaws of
24 arrogance, irresponsibility, and dishonesty that the New York Hearing Committee noted in
25 its findings, or some combination thereof.

 11. The issue is not whether the cause of Dr. Fancher's admitted misconduct in
New York can be definitively established, but whether his continued practice of allopathic
medicine in Arizona endangers the public. Dr. Fancher's demeanor and testimony at the
Arizona hearing differed sharply from the New York Hearing Committee's description.
Here, he was chastened, candid, and, for the most part, forthright. He credibly testified

1 regarding the self-examination he has done and personal changes he has made as a
2 result of his diagnosis of and treatment for alcohol dependence.

3 12. Dr. Fancher's unprofessional conduct occurred when he was practicing
4 medicine, isolated from colleagues or without long-term professional relationships and
5 associations, either as a *locum tenens* emergency room physician or as the sole physician
6 on staff for M.D. Pharmacy/M.D. Healthline. The evidence shows that he responds
appropriately to his colleagues' criticism and developments within his profession.

7 13. But Dr. Fancher's hearing testimony showed that he still does not accept full
8 responsibility for the problems that led to revocation of his New York license, which he still
9 blames on Millard Fillmore Hospital's failure to advise him that it was a training hospital for
10 the University of Buffalo Medical School. Further, while Dr. Fancher was beginning his
11 recovery from alcohol dependence, he prescribed Viagra over the Internet, which he has
12 admitted was "conduct or practice which is or might be harmful or dangerous to the health
13 of the patient or the public." These two circumstances indicate that Dr. Fancher's
commitment to his recovery, without additional proper incentives, may not adequately
protect the public from future personal or professional lapses, regardless of cause.

14 ORDER

15 In view of the foregoing, it is ordered that Respondent's License No. 19982 for the
16 practice of medicine in the State of Arizona is revoked.

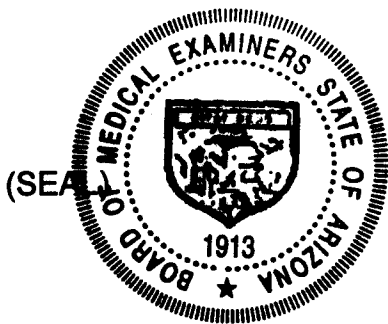
17 RIGHT TO PETITION FOR REVIEW

18 Respondent is hereby notified that he has the right to petition for a rehearing.
19 Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing must be filed with
20 the Board's Executive Director within thirty (30) days after service of this Order and
21 pursuant to A.A.C. R4-16-102, it must set forth legally sufficient reasons for granting a
22 rehearing. Service of this Order is effective five (5) days after the date of mailing.

23 Respondent is further notified that the filing of a petition for rehearing is required to
24 preserve any rights of appeal to the superior court that he may wish to pursue.
25

1 DATED this 25 day of June, 2001.

2 BOARD OF MEDICAL EXAMINERS
3 OF THE STATE OF ARIZONA



6 By: Tom Adams

7 CLAUDIA FOUTZ
8 Executive Director
9 TOM ADAMS
10 Deputy Director

11 Original of the foregoing filed this
12 25 day of June, 2001, with:

13 Arizona Board of Medical Examiners
14 9545 East Doubletree Ranch Road
15 Scottsdale, AZ 85258

16 Copy of the foregoing filed this
17 25 day of June, 2001, with:

18 Cliff J. Vanell, Director
19 Office of Administrative Hearings
20 1400 W. Washington, Ste. 101
21 Phoenix, AZ 85007

22 Executed copy of the foregoing mailed
23 by Certified Mail this
24 25 day of June, 2001, to:

25 John Hawley Fancher
3201 West Peoria - Suite A202
Phoenix, Arizona 85029-4602

Executed copy of the foregoing mailed
this 25 day of June, 2001 to:

Daniel P. Jantsch
Olson, Jantsch, Bakker & Blakey
7243 North 16th Street
Phoenix, Arizona 85020-5203

1 Executed copy of the foregoing mailed
2 this 25 day of June, 2001, to:

3 Stephen Wolf, Assistant Attorney General
4 Office of the Attorney General
5 1275 W. Washington
6 Phoenix, AZ 85007
7 Attorney for the State

8 Executed copy of the foregoing hand delivered
9 this 25 day of June, 2001, to:

10 Christine Cassetta, Assistant Attorney General
11 Arizona Board of Medical Examiners
12 9545 East Doubletree Ranch Road
13 Scottsdale, AZ 85258
14 Legal Advisor to the Board

15 Athena Saner
16 Board Operations